

The Ombudsman's final decision

Summary: Ms S complains about the Council's inaction in dealing with her reports of her neighbour making low frequency noise to annoy her. She also complains the Council decided to restrict her contact with it. The Ombudsman's view is the Council has taken appropriate action to deal with Ms S's reports. So we cannot question the merits of its decision. Similarly, we cannot question the merits of its decision to restrict Ms S's contact. But we do find fault, as the Council did not advise Ms S that she could appeal the decision on restricting her contact.

The complaint

1. The complainant, whom I shall refer to as Ms S, complains:
 - she reported to the Council that her neighbour was deliberately making a low frequency buzzing noise to annoy her;
 - on multiple occasions she asked the Council to look at her evidence. But the Council has not taken this new issue seriously. It has closed the case;
 - the Council then decided to restrict her contact with it.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
3. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. As part of the investigation, I have:
 - considered the complaint and the documents provided by Ms S;
 - made enquiries of the Council and considered its response;
 - spoken to Ms S;

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- sent my draft decision to Ms S and the Council and considered the responses I received.

What I found

Legal and administrative background

Statutory nuisance

5. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take 'reasonably practicable steps' to investigate potential 'statutory nuisances'. Noise can amount to a statutory nuisance.
6. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
 - injure health or be likely to injure health.
7. There is a long-established legal principle that 'nuisance' must be judged on how it affects the average person, not someone who, for whatever reason, is particularly sensitive to it. Officers should always therefore consider whether the issue would amount to a nuisance to the 'average' person.

Anti-social behaviour

8. Councils have a general duty to take action to tackle anti-social behaviour (ASB). But ASB can take many different forms; and councils should make informed decisions about which of their powers is most appropriate for any given situation.

The Council's *Managing Unreasonable Customer Behaviour Policy*

9. The Council's policy says:
 - customers chasing the same enquiry or making the same requests or complaints were 'persistent'. Sometimes persistent contact was justified;
 - but persistent contact could become unreasonable for several reasons. This included:
 - "Refusing to accept that certain issues are not within the scope of the Council;
 - Insisting that a service, process, officer, procedure or policy etc. is dealt with in ways that are not in line with specified process and policy; or
 - Refusing to accept the decision; repeatedly arguing points with no new evidence";
 - the Council might decide to restrict somebody's contact if it viewed their contacts as unreasonably persistent. The restrictions should be proportionate to the nature and frequency of the contacts;
 - if the Council invoked the policy, a senior manager would write to tell the person of what behaviour was unacceptable, the action the Council was taking and the duration;
 - a customer had a right to appeal the decision. The decision letter should explain how the customer could challenge the decision.

What happened

Background

10. Ms S says, soon after new neighbours moved into a home adjoining hers, several years ago, she began to experience unwanted noise from them. She began to report issues with noise from the neighbours to the Council. In 2021 the Council considered Ms S's reports of anti-social behaviour via a formal 'Community Trigger' process.
11. The way the Council dealt with Ms S's contacts are the subject of an earlier complaint.

Low frequency noise

12. In March 2022 Ms S says she turned off her boiler. From then, she became aware of a buzzing noise coming from her neighbour's home. She said it is a low frequency noise that only a small percentage of people can hear. The Council gave Ms S access to its noise recording equipment, but the recordings did not pick up the buzzing. Its officer visited Ms S. She could hear the noise at the time, but the officer could not. The officer also visited the neighbour and found no evidence of anything untoward there.
13. The Council consulted internally and with the police. Its conclusion was it did not have the equipment or expertise to investigate the issue. It would have to employ a contractor, which would be expensive and it still might be unable to trace the alleged source.
14. Over a few days at the end of March and into April, Ms S sent several emails about the issue. She says the effect of the noise on her was so bad (it physically affected her), she went to stay in a hotel. Ms S reports that she still heard the humming at the hotel (over a mile from her home). She says this showed the issue must be affecting other residents, so the Council should take action.
15. On 5 April the Council advised Ms S it did:

“...not have the equipment or expertise to determine the cause of the alleged nuisance which cannot be regarded as statutory nuisance or Anti-Social Behaviour. We would suggest that you seek advice from a specialist in this area who may be able to assist. I must point out that the Council would not fund this and any costs incurred, either through monitoring the alleged nuisance or works carried within your property. This would have to be financed by yourself.

This case will now be closed and regrettably we must advise that further emails on this topic will not receive any further action.”
16. A few weeks later, the police advised the Council it had stopped 'resourcing' Miss S's contact about the low frequency noise.

Restricting Ms S's contact

17. Ms S continued to contact the Council about the issue with the low frequency noise, including making a new complaint. At the end of April, the Council consulted internally whether it needed to restrict Ms S's contact. At the beginning of May the Council emailed Ms S. It's senior officer advised:

“I have reviewed your contact with various departments of the Council, including Environmental Health, Partnerships and Enforcement, along with the responses and assistance given to you by officers within those Teams. I conclude that all available avenues of assistance have been exhausted and

(based on current evidence) there is no further action that Tamworth Borough Council can take in response to your reports of nuisance. Despite this having been explained to you, you have continued to contact Tamworth Borough Council, the local MP and Police Services. I deem this to be excessive and disproportionate contact and therefore unacceptable.”

18. The email explained it was putting restrictions on Ms S’s contact with the Council. It gave her a single point of contact (who was the officer who had, in the main, been dealing with her contacts about her neighbour). It advised her she could still contact it with new information, or about other services. It would review the restrictions in October.

Analysis

The Council’s action about the buzzing noises

19. The role of Ombudsman is not to decide if there is a statutory noise nuisance, but to consider whether the Council properly investigated Ms S’s complaints of noise disturbance.
20. Low frequency noise is noise which occurs at a level just above the hearing threshold. That threshold varies between people. This means while one person may hear it another may not. That makes it difficult for a Council to take action under its noise nuisance procedure, because the test for that is the ‘average’ person.
21. The Council has taken suitable informal action to respond to Ms S’s reports. It visited her at time she could hear the noise. It gave her recording equipment. It also liaised with the police. Its view was it did not have the equipment to investigate. And an independent contractor would be prohibitively expensive, given the possibility it would be unable to locate the source of any noise it found. Those were ‘reasonably practicable steps’, which is what the law on noise nuisance says the Council should take. Without supporting evidence from its investigations, the Council could not take action. Therefore, I cannot say there was fault in its actions, no matter how strongly Ms S disagrees.
22. It was also unlikely further action would conclude the neighbour was anti-social. I note the police have also come to the same conclusion. And the Council has not told the Ombudsman of any other residents reporting problems with the low frequency noise.

The decision to restrict Ms S’s contact

23. The Council has used significant amounts of officer time and other resources dealing with Ms S’s complaints. I understand (having spoken to Ms S) the noise she can hear has significantly affected her. But the Council has been clear it cannot take any action about this. Ms S has continued to contact it, as she does not accept that decision. I do not consider it was fault for the Council to decide to restrict Ms S’s contacts. It struck the appropriate balance between its wider duties to all other members of the public and its staff, while allowing Ms S to continue to have contact. It did not prevent Ms S from contacting the Council on other matters.
24. However, the Council’s policy says the decision was appealable. And it should have advised Ms S about this in its decision. The email to Ms S does not mention any appeal rights. So my decision is that was fault.

Recommended action

25. In response to my draft decision the Council has agreed, within a month of my final decision, to:
- write to Ms S apologising for not advising her of her right to appeal its decision on restricting her contact;
 - review what restrictions it had on her contact with the Council. If it still had restrictions in place, it would advise Ms S of her right to appeal the restrictions;
 - change its template letter that advised customers of restricted contact to advise of the right to appeal.

Final decision

26. The Ombudsman upholds this complaint because of fault by the Council in not advising Ms S about her right to appeal a decision. The Council has agreed to my recommendations. So I have completed my investigation.

Investigator's decision on behalf of the Ombudsman

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